In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1067

W. M. R. WATCH CASE CORPORATION, ET AL.,
PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 5a-8a) and the opinion and order of the Federal Trade Commission (App. 46-53)[1] have not been officially reported.

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[1] "App." refers to the joint appendix filed by petitioners in the court below.

JURISDICTION

The decree of the court of appeals denying the petition to review and enforcing the Commission's order was entered on March 11, 1965 (Pet. 1a-2a). The petition for a writ of certiorari was filed on April 14, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether the Commission's cease and desist order properly (1) requires petitioners to mark the foreign country of origin of watch cases imported by them on the outside—rather than the inside—of the watch cases; (2) requires petitioners to disclose the true metallic content of their watch cases; and (3) prohibits petitioners from misrepresenting that their watch cases are "water resistant."

STATUTES AND RULES INVOLVED

Pertinent provisions of the Federal Trade Commission Act, and of the Tariff Act of 1930, are set forth at pages 8-10a, 13a of the petition for certiorari.

Rule 174.2(b)(12) of the Trade Practice Rules for the Watch Case Industry, 16 C.F.R. 174.2(b)(12) is set forth in part in the petition, page 14a. Also pertinent is subparagraph (b)(13) of those Rules, 16 C.F.R. 174.2(b)(13), which provides in part:

> *Cases having a combination of different metals.* In respect of watch cases having a back and bezel composed, respectively, of a different kind or

quality of metal, the disclosure for marking . . . shall be made . . . with respect to each such respective parts, as for example:

> Base Metal Back 14K Gold Filled Bezel [To be shown together or at one place on the case].

When two or more parts of the case do not have the appearance of being made of the same quality or kind of metal, as for example, when the bezel . . . is of gold filled quality and the back is stainless steel, the marking . . . may be separated as illustrated . . .:

> Stainless Steel [Placed on the back]. 14K Gold Filled [Placed on the bezel].

* * * *

STATEMENT

Petitioners, a New York Corporation and its president, manufacture and import watch cases—backs and bezels [2]—from Europe and the Orient (App. 11-13). They sell the cases to watch manufacturers, who assemble and encase watch movements therein and resell the completed product to the public (App. 33).

The Federal Trade Commission instituted proceedings against petitioners in May 1963. The complaint (App. 1-4) charged that by (1) failing to disclose the name of the foreign country of origin on the outside of the watch cases, (2) failing to reveal the true metal composition of the bezels, and (3) representing that their watches were "water resistant", petitioners

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[2] The bezel of a watch is the grooved rim that holds the crystal on a watch.

engaged in unfair methods of competition and deceptive practices in violation of Section 5 of the Federal Trade Commission Act. Testimony before the Commission examiner revealed that petitioners mark the name of the foreign country of origin on the inside of both the case backs and bezels, but after the watch parts are assembled, the country's identity is no longer visible to the consumer (App. 23-24). Watch manufacturers frequently assemble petitioners' cases with movements imported from Switzerland, in which case the dials bear the word "Swiss" (App. 33-34). The examiner found that where the watch cases are imported from countries other than Switzerland the absence of visible disclosure of this fact misleads the public by causing them to understand that the cases are either of domestic or Swiss origin (App. 49). Second, many of the bezels sold by petitioners are electrolytically finished in a color simulating precious metal (silver or gold) or stainless steel; the true metallic content of the base metal (brass, which is chromium-nickel plated or gold-electroplated) is not disclosed (App. 13, 16, 19-20). The examiner found this lack of disclosure to be deceptive (App. 48). Finally, the examiner found deceptive petitioners' representations that certain of their watch cases were "water resistant" (App. 48), it having been demonstrated that several of the cases failed water resistance laboratory tests recognized by petitioners to have been properly conducted (App. 20-21).

The Commission adopted the examiner's initial decision, with a modification, and entered a final order directing petitioners to cease and desist selling watch

cases (1) of foreign origin without disclosing the identity of the foreign country on the exterior of the case, (2) treated to simulate precious metal or stainless steel without disclosing the true metallic content of the case and (3) with the representation that the cases are "water resistant" unless they meet the Commission's test (App. 51-53). The court of appeals affirmed the Commission's order, noting that the practices here were identical to those recently found by the Second Circuit to be unfair and deceptive (Pet. 5a-7a).[3]

ARGUMENT

The acts and practices cited by the Commission are admitted by petitioners, and the court of appeals correctly held that the Commission was well within its discretion in concluding that such practices were deceptive and misleading, and in prohibiting them. Further review is not warranted.

1. Petitioners' principal complaint is that the Commission's order requiring them to mark the name of the foreign country of origin on the exterior of their watch cases (a) would confuse the public, (b) places them at a competitive disadvantage and (c) conflicts with a provision of the Tariff Act of 1930, as amended, 19 U.S.C. 1001 (Pet. 8-10). Their contentions were correctly rejected by the court of appeals (Pet. 7a-8a).

(a) Petitioners contend that noting the foreign country of origin on the exterior of watch cases is

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[3] *Delaware Watch Co.* v. *Federal Trade Commission*, 332 F. 2d 745 (C.A. 2).

not needed to protect the watch manufacturers and would confuse the public by implying that the indicated origin was the source of the movements, the principal part of the watches (Pet. 6). However, it is not difficult to indicate the origin of the back by an appropriate notice which will avoid a new misrepresentation about the watch movements; indeed, the Commission occasionally requires separate notices with regard to back and bezel (*infra*, p. 8). The Commission found, moreover, that the public prefers cases of domestic or Swiss origin and would be deceived in the absence of external disclosure of the origins of the cases (J.A. 49). These findings, which are identical to those affirmed by the Second Circuit in *Delaware Watch Co.* v. *Federal Trade Commission*, 332 F. 2d 745 (C.A. 2), fully support the order.

(b) Petitioners place unwarranted reliance upon the Federal Trade Commission Administrative Bulletin 64-10 issued after the entry of the order in this case, which they view as indicating a change in Commission policy relating to nondisclosure of foreign country of origin. The court of appeals correctly held that the bulletin merely sets forth certain guide lines to be followed by the Commission's staff in deciding whether or not to prosecute future cases involving deceptive practices in this area (Pet. 6a),[4] and that

[4] The F.T.C. bulletin (Pet. 10a-13a) provides essentially that cases involving non-disclosure of foreign country of origin should be prosecuted where there is a substantial public interest and the product is a primary ingredient of the finished article, not readily replaceable by domestic goods.

the agency's judgment in not proceeding against petitioners' competitors is no basis for reversing the order here. *Moog Industries, Inc.* v. *Federal Trade Commission*, 355 U.S. 411. In any event, the Commission has continued to prosecute proceedings against importers of watch cases charging deceptive practices identical to those alleged here.[5]

(c) The court of appeals correctly rejected petitioners' contention that the Tariff Act provision requiring markings of foreign country of origin on the inside of imported watch cases preempts Commission authority to require external markings (Pet. 7a-8a). The Federal Trade Commission Act is a broad statute forbidding unfair or deceptive acts or practices, whereas the Tariff Act of 1930, as amended in 1938, 19 U.S.C. 1001, is a limited statute on an entirely different subject—the conditions under which foreign goods shall enter the United States—and is "aimed at the collection of duties rather than the protection of the ultimate purchaser in the United States," *United States* v. *Mersky*, 361 U.S. 431, 440. The Tariff Act "discloses no language expressing an intention on the part of Congress to repeal Section 5 of the Federal Trade Commission Act, or to diminish the authority or the power of the Commission to prevent deceptive trade practices," *L. Heller & Son* v. *Federal Trade Commission*, 191 F. 2d 954, 957 (C.A. 7). In view of their different objectives, both the Treasury Department and the Commission have jurisdiction to regulate the marking of foreign origin articles, *Bald-*

[5] *E.g. Detra Watch Case Corp.*, Docket 8597; *Savoy Watch Case Co.*, Docket 8080.

win Bracelet Corporation v. *Federal Trade Commission*, 325 F. 2d 1012 (C.A.D.C.), certiorari denied, 377 U.S. 923.

2. Petitioners contest neither the Commission finding that their base metal bezels could be mistaken for precious metals nor its findings that absence of an affirmative disclosure of the true metallic composition of the bezels is deceptive (App. 47-48), *Theo. Kagen Corp.* v. *Federal Trade Commission*, 283 F. 2d 371 (C.A.D.C.), certiorari denied, 365 U.S. 843. They urge, however, (Pet. 10-12) that, by stamping "stainless steel" on the backs of cases composed of a combination stainless steel back and electroplated bezel (white or silver, yellow or gold in color), they are already complying with Rule 174.2(b)(12) of the Commission's Trade Practice Rules for the Watch Case Industry and that the Commission's order requiring additional disclosure is therefore unwarranted. However, reliance on that Rule, which concerns cases wholly composed of one metal, is misplaced. The order relates to petitioners' cases composed of more than one metal—in which the back is stainless steel but the bezel is brass, plated with chromium-nickel or gold. Rule 174.2(b)(13) (*supra*, pp. 2-3) requires watch "[c]ases having a combination of different metals" to be marked with the metal content of both back and bezel.

3. Petitioners concede that the water resistance tests were properly conducted by the Commission and that the results established that none of the watch cases tested was in fact water resistant. The contention that the negative test results were attributa-

ble to the manufacturers' assembling the cases with improper crowns supplied by others (Pet. 13) is contrary to petitioners' stipulation before the Commission that the watch cases tested contained crowns supplied by petitioner W. M. R. itself (App. 22). The Commission's order prohibiting them from making incorrect representations in this regard was clearly proper.

CONCLUSION

The decision of the court below is plainly correct and presents no important question of law warranting further review. The petition for writ of certiorari should be denied.

Respectfully submitted,

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